



U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

HOSTAGE LOAD SITUATIONS ON SHIPMENTS MOVING IN INTERSTATE COMMERCE

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TITLE 49

TRANSPORTATION

SUBTITLE IV--INTERSTATE TRANSPORTATION

PART B--MOTOR CARRIERS, WATER CARRIERS, BROKERS, AND FREIGHT FORWARDERS

In this part:

Board.--The term “Board” means the Surface Transportation Board. (49 USC § 13102(1))

Secretary.--The term “Secretary” means the Secretary of Transportation. (49 USC § 13102(17))

CHAPTER 135--JURISDICTION

SUBCHAPTER I--MOTOR CARRIER TRANSPORTATION

§ 13501. General jurisdiction

The Secretary and the Board have jurisdiction, as specified in this part, over transportation by motor carrier and the procurement of that transportation, to the extent that passengers, property, or both, are transported by motor carrier--

- (1) between a place in--
 - (A) a State and a place in another State;
 - (B) a State and another place in the same State through another State;
 - (C) the United States and a place in a territory or possession of the United States to the extent the transportation is in the United States;
 - (D) the United States and another place in the United States through a foreign country to the extent the transportation is in the United States; or
 - (E) the United States and a place in a foreign country to the extent the transportation is in the United States; and
- (2) in a reservation under the exclusive jurisdiction of the United States or on a public highway.

SUBCHAPTER III--FREIGHT FORWARDER SERVICE

§ 13531. General jurisdiction

(a) **In general.**--The Secretary and the Board have jurisdiction, as specified in this part, over service that a freight forwarder undertakes to provide, or is authorized or required under this part to provide, to the extent transportation is provided in the United States and is between--

- (1) a place in a State and a place in another State, even if part of the transportation is outside the United States;
- (2) a place in a State and another place in the same State through a place outside the State; or
- (3) a place in the United States and a place outside the United States.

(b) **Exemption of certain air carrier service.**--Neither the Secretary nor the Board has jurisdiction under subsection (a) of this section over service undertaken by a freight forwarder using transportation of an air carrier subject to Part A of subtitle VII of this title.

CHAPTER 137--RATES AND THROUGH ROUTES

§ 13707. Payment of rates

(a) **Transfer of possession upon payment.**--Except as provided in subsection (b), a carrier providing transportation or service subject to jurisdiction under this part shall give up possession at the destination of the property transported by it only when payment for the transportation or service is made.

* * *

CHAPTER 139--REGISTRATION

§ 13901. Requirement for registration

A person may provide transportation or service subject to jurisdiction under subchapter I or III of chapter 135 or be a broker for transportation subject to jurisdiction under subchapter I of that chapter, only if the person is registered under this chapter to provide the transportation or service.

§ 13902. Registration of motor carriers

(a) Motor carrier generally.--

(1) **In general.**--Except as provided in this section, the Secretary shall register a person to provide transportation subject to jurisdiction under subchapter I of chapter 135 of this title as a motor carrier if the Secretary finds that the person is willing and able to comply with--

(A) this part and the applicable regulations of the Secretary and the Board;

(B) any safety regulations imposed by the Secretary and the safety fitness requirements established by the Secretary under section 31144; and

(C) the minimum financial responsibility requirements established by the Secretary pursuant to sections 13906 and 31138.

* * *

§ 13903. Registration of freight forwarders

(a) **In general.**--The Secretary shall register a person to provide service subject to jurisdiction under subchapter III of chapter 135 as a freight forwarder if the Secretary finds that the person is fit, willing, and able to provide the service and to comply with this part and applicable regulations of the Secretary and the Board.

* * *

§ 13904. Registration of brokers

(a) **In general.**--The Secretary shall register, subject to section 13906(b), a person to be a broker for transportation of property subject to jurisdiction under subchapter I of chapter 135, if the Secretary finds that the person is fit, willing, and able to be a broker for transportation and to comply with this part and applicable regulations of the Secretary.

* * *

§ 13906. Security of motor carriers, brokers, and freight forwarders

(a) Motor carrier requirements.--

(1) **Liability insurance requirement.**--The Secretary may register a motor carrier under section 13902 only if the registrant files with the Secretary a bond, insurance policy, or other type of security approved by the Secretary, in an amount not less than such amount as the Secretary prescribes * * *. A registration remains in

effect only as long as the registrant continues to satisfy the security requirements of this paragraph.

* * *

(3) Transportation insurance.--The Secretary may require a registered motor carrier to file with the Secretary a type of security sufficient to pay a shipper or consignee for damage to property of the shipper or consignee placed in the possession of the motor carrier as the result of transportation provided under this part. A carrier required by law to pay a shipper or consignee for loss, damage, or default for which a connecting motor carrier is responsible is subrogated, to the extent of the amount paid, to the rights of the shipper or consignee under any such security.

(b) Broker requirements.--The Secretary may register a person as a broker under section 13904 only if the person files with the Secretary a bond, insurance policy, or other type of security approved by the Secretary to ensure that the transportation for which a broker arranges is provided. The registration remains in effect only as long as the broker continues to satisfy the security requirements of this subsection.

(c) Freight forwarder requirements.--

(1) Liability insurance.--The Secretary may register a person as a freight forwarder under section 13903 of this title only if the person files with the Secretary a bond, insurance policy, or other type of security approved by the Secretary. * * *

(2) Freight forwarder insurance.--The Secretary may require a registered freight forwarder to file with the Secretary a bond, insurance policy, or other type of security approved by the Secretary sufficient to pay, not more than the amount of the security, for loss of, or damage to, property for which the freight forwarder provides service.

(3) Effective period.--The freight forwarder's registration remains in effect only as long as the freight forwarder continues to satisfy the security requirements of this subsection.

* * *

CHAPTER 141--OPERATIONS OF CARRIERS

SUBCHAPTER I--GENERAL REQUIREMENTS

§ 14101. Providing transportation and service

(a) On reasonable request.--A carrier providing transportation or service subject to jurisdiction under chapter 135 shall provide the transportation or service on reasonable request. In addition, a motor carrier shall provide safe and adequate service, equipment, and facilities.

(b) Contracts with shippers.--

(1) In general.--A carrier providing transportation or service subject to jurisdiction under chapter 135 may enter into a contract with a shipper, other than for the movement of household goods described in section 13102(10)(A), to provide specified services under specified rates and conditions. If the shipper and carrier, in

writing, expressly waive any or all rights and remedies under this part for the transportation covered by the contract, the transportation provided under the contract shall not be subject to the waived rights and remedies and may not be subsequently challenged on the ground that it violates the waived rights and remedies. The parties may not waive the provisions governing registration, insurance, or safety fitness.

(2) Remedy for breach of contract.--The exclusive remedy for any alleged breach of a contract entered into under this subsection shall be an action in an appropriate State court or United States district court, unless the parties otherwise agree.

CHAPTER 147--ENFORCEMENT; INVESTIGATIONS; RIGHTS; REMEDIES

* * *

§ 14704. Rights and remedies of persons injured by carriers or brokers

(a) In general.--

(1) Enforcement of order.--A person injured because a carrier or broker providing transportation or service subject to jurisdiction under chapter 135 does not obey an order of the Secretary or the Board, as applicable, under this part, except an order for the payment of money, may bring a civil action to enforce that order under this subsection. * * *

(2) Damages for violations.--A carrier or broker providing transportation or service subject to jurisdiction under chapter 135 is liable for damages sustained by a person as a result of an act or omission of that carrier or broker in violation of this part.

(b) Liability and damages for exceeding tariff rate.--A carrier providing transportation or service subject to jurisdiction under chapter 135 is liable to a person for amounts charged that exceed the applicable rate for transportation or service contained in a tariff in effect under section 13702.

(c) Election.--

(1) Complaint to DOT or Board; civil action.--A person may file a complaint with the Board or the Secretary, as applicable, under section 14701(b) or bring a civil action under subsection (b) to enforce liability against a carrier or broker providing transportation or service subject to jurisdiction under chapter 135.

* * *

§ 14705. Limitation on actions by and against carriers

(a) In general.--A carrier providing transportation or service subject to jurisdiction under chapter 135 must begin a civil action to recover charges for transportation or service provided by the carrier within 18 months after the claim accrues.

(b) Overcharges.--A person must begin a civil action to recover overcharges within 18 months after the claim accrues. If the claim is against a carrier providing transportation subject to jurisdiction under chapter 135 and an election to file a complaint with the Board

or Secretary, as applicable, is made under section 14704(c)(1), the complaint must be filed within 3 years after the claim accrues.

(c) Damages.--A person must file a complaint with the Board or Secretary, as applicable, to recover damages under section 14704(b) within 2 years after the claim accrues.

(d) Extensions.--The limitation periods under subsection (b) of this section are extended for 6 months from the time written notice is given to the claimant by the carrier of disallowance of any part of the claim specified in the notice if a written claim is given to the carrier within those limitation periods. The limitation periods under subsections (b) and (c) of this section are extended for 90 days from the time the carrier begins a civil action under subsection (a) to recover charges related to the same transportation or service, or collects (without beginning a civil action under that subsection) the charge for that transportation or service if that action is begun or collection is made within the appropriate period.

(e) Payment.--A person must begin a civil action to enforce an order of the Board or Secretary against a carrier within 1 year after the date of the order.

* * *

(g) Accrual date.--A claim related to a shipment of property accrues under this section on delivery or tender of delivery by the carrier.

§ 14706. Liability of carriers under receipts and bills of lading

(a) General liability.--

(1) Motor carriers and freight forwarders.--A carrier providing transportation or service subject to jurisdiction under subchapter I or III of chapter 135 shall issue a receipt or bill of lading for property it receives for transportation under this part. That carrier and any other carrier that delivers the property and is providing transportation or service * * * are liable to the person entitled to recover under the receipt or bill of lading. The liability imposed under this paragraph is for the actual loss or injury to the property * * *. Failure to issue a receipt or bill of lading does not affect the liability of a carrier. * * *

(2) Freight forwarder.--A freight forwarder is both the receiving and delivering carrier. * * *

* * *

(d) Civil actions.--

(1) Against delivering carrier.--A civil action under this section may be brought against a delivering carrier in a district court of the United States or in a State court. Trial, if the action is brought in a district court of the United States is in a judicial district, and if in a State court, is in a State through which the defendant carrier operates.

(2) Against carrier responsible for loss.--A civil action under this section may be brought against the carrier alleged to have caused the loss or damage, in the judicial district in which such loss or damage is alleged to have occurred.

(3) Jurisdiction of courts.--A civil action under this section may be brought in a United States district court or in a State court.

(4) Judicial district defined.--In this section, “judicial district” means--

(A) in the case of a United States district court, a judicial district of the United States; and

(B) in the case of a State court, the applicable geographic area over which such court exercises jurisdiction.

(e) Minimum period for filing claims.--

(1) In general.--A carrier may not provide by rule, contract, or otherwise, a period of less than 9 months for filing a claim against it under this section and a period of less than 2 years for bringing a civil action against it under this section. The period for bringing a civil action is computed from the date the carrier gives a person written notice that the carrier has disallowed any part of the claim specified in the notice.

(2) Special rules.--For the purposes of this subsection--

(A) an offer of compromise shall not constitute a disallowance of any part of the claim unless the carrier, in writing, informs the claimant that such part of the claim is disallowed and provides reasons for such disallowance; and

(B) communications received from a carrier’s insurer shall not constitute a disallowance of any part of the claim unless the insurer, in writing, informs the claimant that such part of the claim is disallowed, provides reason for such disallowance, and informs the claimant that the insurer is acting on behalf of the carrier.

* * *

§ 14707. Private enforcement of registration requirement

(a) In general.--If a person provides transportation by motor vehicle or service in clear violation of section 13901-13904 or 13906, a person injured by the transportation or service may bring a civil action to enforce any such section. In a civil action under this subsection, trial is in the judicial district in which the person who violated that section operates.

(b) Procedure.--A copy of the complaint in a civil action under subsection (a) shall be served on the Secretary and a certificate of service must appear in the complaint filed with the court. The Secretary may intervene in a civil action under subsection (a). The Secretary may notify the district court in which the action is pending that the Secretary intends to consider the matter that is the subject of the complaint in a proceeding before the Secretary. When that notice is filed, the court shall stay further action pending disposition of the proceeding before the Secretary.

(c) Attorney’s fees.--In a civil action under subsection (a), the court may determine the amount of and award a reasonable attorney’s fee to the prevailing party. That fee is in addition to costs allowable under the Federal Rules of Civil Procedure.

GENERAL INFORMATION REGARDING HOSTAGE LOAD SITUATIONS ON SHIPMENTS MOVING IN INTERSTATE COMMERCE

A carrier has a lien on the property it is transporting for freight charges and any other charges lawfully incurred on that shipment. The lien is specific to that shipment, however, and does not extend to other shipments which have moved under other bills of lading. Thus, a carrier may withhold delivery of a shipment until all charges relative to that particular shipment are paid. The carrier may not, however, withhold delivery of one shipment to enforce the collection of past due freight charges on another shipment.

When a carrier does hold one shipment hostage to force the payment of freight charges on another shipment, it arguably commits the following offenses:

- a. Conversion. As explained in Sigmon, Miller's Law of Freight Loss and Damage Claims (4th ed. 1974), p. 174:

Conversion is an act of interference with the dominion or control over the property of another. Conversion may be committed by (1) acquiring possession of the goods with an intent to assert a right to them which is in fact adverse to that of the owner; (2) transferring the goods in a manner which deprives the owner of control; (3) unreasonably withholding possession from one who has the right to it; * * *

Generally, the shipper would have a private right of action against the carrier. The Federal Motor Carrier Safety Administration has no regulatory enforcement power against a carrier for conversion. The carrier may be held liable for damages, however, pursuant to Title, 49 U.S. Code, Section 14706.

- b. Providing transportation and service as required at Title 49, U.S. Code, Section 14101:

A carrier providing transportation or service subject to jurisdiction under chapter 135 shall provide the transportation or service on reasonable request. In addition, a motor carrier shall provide safe and adequate service, equipment, and facilities.

- c. Theft of interstate freight. Pursuant to Title 18, U.S. Code, Section 659:

Whoever embezzles, steals, or unlawfully takes, carries away, or conceals, or by fraud or deception obtains * * * with intent to convert to his own use any goods or chattels moving as or which are a part of or which constitute an interstate or foreign shipment of freight, express, or other property

* * *

Shall in each case be fined under this title or imprisoned not more than ten years, or both; but if the amount or value of such money, baggage, goods or chattels does not

exceed \$100, he shall be fined under this title or imprisoned not more than one year, or both.

Although the Federal Motor Carrier Safety Administration attempts to assist complainants, it does not have the statutory jurisdiction to adjudicate complaints to a final resolution. As a result, a shipper may be in a better position to protect his/her interests by pursuing private legal action.

Under Section 14704 of Title 49, U.S. Code, a person is authorized to pursue private legal action to enforce an order of the Secretary or the Surface Transportation Board (of the U.S. Department of Transportation) and to recover damages caused by a carrier or broker operating in violation of federal law. It also makes a carrier liable to a person for rates charged in excess of those contained in a tariff, and it establishes procedures for pursuing these remedies.

Under Section 14707 of Title 49, U.S. Code, a person injured by an unregistered and/or uninsured carrier or broker is authorized to file a civil action to enforce the registration and insurance provisions. That statute also provides for the recovery of attorney's fees and court costs.